

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act and Broadband Access and)	
Services)	RM-10865

**REPLY COMMENTS OF
NEW YORK UNIVERSITY**

Introduction

New York University (“NYU”) respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking adopted in the above-captioned docket.¹ The purpose of these comments is to urge the Federal Communications Commission (the “Commission”) to declare that higher education institutions are not required to comply with the Communications Assistance for Law Enforcement Act (“CALEA”). The framework for this request is provided in the comments filed by the Higher Education Coalition (the “Coalition”) on November 14, 2005, which NYU supports. NYU further requests that the Commission move rapidly to make this declaration, so as to remove the substantial uncertainty currently facing the higher education community on this question.

¹ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sept. 23, 2005) (“Order”).

NYU's position is that CALEA does not apply to higher education and research institutions under the plain meaning of the statute and under the express language of the Order. The Commission should resolve any existing ambiguities and make clear that the private networks operated by colleges, universities, and research institutions are exempt from CALEA.

NYU endorses the goal of Law Enforcement Agencies ("LEAs") to provide security for our students, our community and our nation. Methods and technologies already in place at NYU have been demonstrably successful in supporting this goal, without NYU implementing elaborate CALEA compliance capabilities. Furthermore, the extremely low numbers of surveillance and data requests made to NYU by LEAs over the past two decades, along with NYU's track record of expeditious response to those requests, do not justify the cost and effort associated with extending CALEA compliance to NYU's broadband network.

In addition, the imposition of CALEA requirements on NYU's network would abruptly impose significant costs on the institution and its students, would impede NYU's ability to deliver on its core academic mission, and would inflict economic hardship on its students.

Discussion

1. The Commission Should Clarify That Higher Education Networks Are Exempt from CALEA.

CALEA was written to cover "telecommunications carrier[s]", defined as "a

person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire” 47 U.S.C. § 1001(8)(A). Higher education and research institutions such as NYU are not “for hire” and are therefore not subject to CALEA. The Commission indicated in the Order that “schools” were not meant to be covered by the Substantial Replacement Provision (“SRP”):

... establishments that acquire broadband Internet access service from a facilities based provider to enable their patrons or customers to access the Internet from their respective establishments are not considered facilities-based broadband Internet access service providers subject to CALEA under the SRP.
Order at ¶ 36

“Schools” are listed as an example of these establishments in footnote 99.

In addition, CALEA specifically exempts: “equipment, facilities, or services that support the transport or switching of communications for private networks.” 47 U.S.C. § 1002(b)(2)(B). The Commission acknowledged in the Order that private educational networks qualify for this exemption:

To the extent that EDUCAUSE members (or similar organizations) are engaged in the provision of facilities-based private broadband networks or intranets that enable members to communicate with one another and/or retrieve information from shared data libraries not available to the general public, these networks appear to be private networks for purposes of CALEA.
Order at ¶ 36, n.100

However, the Commission introduced ambiguity by continuing in footnote 100: “To the extent. . . that [such] private networks are interconnected with a public network,

either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA . . .”

Most contemporary private networks at higher education institutions provide access to the public Internet as one of the available services for their members. It is thus contradictory for the Commission to create a broad exemption for higher education and then put a condition on that exemption such that few, if any, institutions are eligible. Therefore, the Commission should state that higher education institutions are not covered by the language at the end of footnote 100, in light of the statutory exemption for private networks.

Alternatively, the Commission should invoke its discretionary authority under 47 U.S.C. § 1001 (8)(C)(ii) of CALEA to exempt higher education and research institutions from compliance with CALEA assistance-capability requirements.

2. NYU’s Experience with Surveillance Requests Demonstrates the Lack of Justification to Impose CALEA Requirements on Higher Education Networks.

NYU is a large private research University, serving over 50,000 students. Forty thousand objects – computers, printers and other devices – are connected to the University’s network. With its main campus located less than two miles north of the World Trade Center, NYU has a particularly heightened appreciation for the importance of protecting safety and security.

In the past 20 years, NYU has received only one surveillance request, and NYU complied fully by utilizing existing equipment and procedures. In the small number of other data requests received from LEAs in this same period, NYU complied in an appropriate timeframe. NYU's relationships with law enforcement have been consistently professional and responsive. NYU has a staff of network engineers, telephone technicians, and technology security specialists who are available 24/7 to handle any technology issue. In responding to requests for surveillance and data from LEAs, the technical staff works in close consultation with NYU's Office of Public Safety and Office of Legal Counsel.

NYU's experience highlights that higher education is willing and able to work collaboratively with LEAs to implement lawful surveillance requests. The imposition of burdensome new technological upgrades to enhance NYU's assistance capability under CALEA is simply not necessary to serve the interests of law enforcement. It is not justifiable, especially in light of both the infrequency of such requests and the institution's long history of cooperation.

3. A Broad Application of CALEA Would Impose Significant Burdens on NYU, Divert Funds from Its Critical Educational Mission, and Disproportionately Increase the Cost of Education that Students Pay.

NYU's position is that CALEA by statute does not apply to higher education and that the extremely low numbers of surveillance requests made over the past two decades do not justify imposing CALEA on higher education. Nevertheless, if CALEA requirements were placed on Coalition members, there is ample reason to estimate that such compliance could cost NYU a hitherto unplanned expenditure of

multiple millions of dollars in a very short time period. This would impose an untenable burden on the institution. No improvement to NYU or its students would result from such expenditures. Expenditures and the related equipment installation and administration efforts required for CALEA compliance would necessarily divert resources away from the University's education and research priorities.

Ultimately, NYU's expenditures for CALEA would significantly increase the costs for NYU students, while delivering no educational value to them. Most NYU students already carry substantial loan burdens and work at least one job in order to pursue their education here. Especially at a time when federal funding for student loans is being drastically reduced, it is entirely inappropriate for federal requirements to mandate raising for this unrelated purpose the costs that NYU students must pay.

Conclusion

NYU respectfully requests that the Commission state that private networks operated by higher education and research institutions are either not subject to CALEA or are exempt from it. At a minimum, the Commission should adopt alternative requirements for higher education, which are both technically feasible and cost justifiable.

Respectfully submitted,

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